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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/067,569	02/05/2002	Dusan Miljkovic	STL001A	5844
20995	7590	06/14/2005	EXAMINER	
KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614			GEORGE, KONATA M	
			ART UNIT	PAPER NUMBER
			1616	

DATE MAILED: 06/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/067,569	MILJKOVIC ET AL.	
	Examiner	Art Unit	
	Konata M. George	1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 24 March 2005.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-11, 17-29 and 48-52 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11, 17-29 and 48-52 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 February 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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### **DETAILED ACTION**

Claims 1-11, 17-29 and 48-52 are pending in this application.

#### ***Request Continued Examination (RCE)***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 24, 2005 has been entered.

#### ***Information Disclosure Statement***

2. The information disclosure statement (IDS) submitted on March 24, 2005 was noted and the submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the examiner has considered the information disclosure statement. With respect to the IDS filed July 9, 2004 that was not considered in previous office actions, examiner received document number 44, however, documents 43 and 45 are still not considered as the references are not with the application.

### ***Action Summary***

3. Examiner acknowledges the cancellation of claims 12-16, 30-47 and 53-

64. Therefore, any and all rejections and objections directed towards them are hereby withdrawn.

4. The rejection of claims 1-3, 7-9 and 48 under 35 U.S.C. 102(b) as being anticipated by Policappelli et al. is being maintained for the reasons stated in the previous office action.

5. The rejection of claims 1-9, 11, 17-29 and 48-52 under 35 U.S.C. 102(e) as being anticipated by Drunnen et al. is being maintained for the reasons stated in the previous office action.

6. The rejection of claims 10 and 49-52 under 35 U.S.C. 103(a) over Policappelli et al. is being maintained for the reasons stated in the previous office action.

### ***Response to Arguments***

7. Applicant's arguments filed March 24, 2005 have been fully considered but they are not persuasive.

Applicants' argue that neither of the prior art references teaches that the extract from an agricultural by-product is detoxified. Examiner disagrees.

Policappelli et al. is directed towards dietary supplement for use as a method of weight loss. As such, it is the position of the examiner that since this composition is used for human consumption then, the composition would not contain any toxic substances whether it is natural or artificial. If one of ordinary

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skill in the art were preparing an extract from an agricultural by-product for use in human consumption that may also contain a toxic component, it would have been inherent and obvious to remove the toxic portion by means of a detoxifying step.

Drunnen et al. is directed towards a process for enriching food and beverages for human consumption. Drunnen et al. disclose a method for obtaining the extract which comprises several steps which includes a purification procedure. It is the position of the examiner that during this procedure any potentially toxic material is removed from the extract. Column 3, lines 40-42 states, "If needed, the extract is purified as desire... For example, by selective absorption or selective extraction of an unwanted constituent, such as caffeine." It is the position of the examiner that any that is toxic is considered an "unwanted constituent" and would not be used in a composition for human consumption.

### ***Conclusion***

8. Claims 1-11, 17-29 and 48-52 remain rejected.

### ***Telephone Inquiries***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Konata M. George, whose telephone number is (571) 272-0613. The examiner can normally be reached from 8AM to 6:30PM Monday to Thursday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Kunz, can be reached at (571) 272-0887. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-1600.

Konata M. George



SHELLEY A. DODSON  
PRIMARY EXAMINER